United States Court of Appeals

for the Second Circuit

APPENDIX

75-2131

To be argued by:
RICHARD A. GREENBERG

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA ex rel.
JAMES HAWKINS,

Appellant,

-against-

J. EDWIN LaVALLEE,
Superintendent,
Clinton Correctional Facility,
Dannemora, New York,

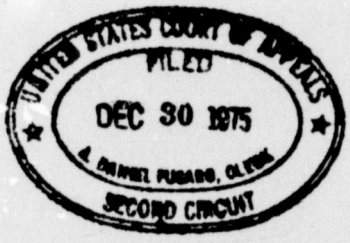
Appellee.

Docket No. 75-2131

B
P/S

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM AN ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
JAMES HAWKINS
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

RICHARD A. GREENBERG,
Of Counsel.

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INDEX TO THE APPENDIX

POST OFFICE	DOCKET NUMBER	FILING DATE	J	N/S	O	R	DEMAND	JUDGE	JURY	DOCKET
207/1	75 1019	06 26 75	3	530				0715		

PLAINTIFFS

HAWKINS, James, etc.

United States of America, ex rel.,
JAMES HAWKINS

DEFENDANTS

LAVALLEE, J.E., etc.

J.E. LAVALLEE, Superintendent,
Clinton Correctional Facility,
Dannemora, New York 12929

CAUSE

HABEAS CORPUS
§70-1062 relates

ATTORNEYS

For PLAINTIFF:
James Hawkins, Pro Se
#82/12
Box B
Dannemora, New York

(A)

FILING FEES PAID

HAWKINS vs. LAVALLEE

DATE	PROCEEDINGS	
-26-75	Application for writ of habeas corpus filed.	(1)
-30-75	BY WEINSTEIN, J.--ORDER TO SHOW CAUSE dtd 6-27-75 FILED. Ordered that the Attorney General of NYS & the D.A. of Kings County show cause before this Court by the filing of a return to the petition why a writ of habeas corpus should not be issued, etc. Copy of order mailed to parties, copy of petition also forwarded to Attorney General & D.A. of Kings County.	(2) (3)
7-31-75	Affidavit in opposition filed.	(4)
8-22-75	Affidavit of service with affidavit of reply filed.	
8-25-75	By WEINSTEIN, J.--MEMORANDUM AND ORDER dtd. 8-25-75 filed. The petition is dismissed. Copy of order mailed to Atty. General & to petitioner.	(5)
0/2/75	By WEINSTEIN, J.- Memorandum and Order dated 10/2/75 filed that in view of the novel circumstances described in the record and this court's Memorandum, a certificate of probable cause is hereby issued. Copy of Memorandum and Order is mailed to the attys, the petitioner and the Clerk of the Court.	(6)
0/2/75	Notice of Motion for a certificate of probable cause of Pltff ~~HAWKINS~~ filed (relates to Doc. #6-see Order dated 10/2/75)	(7)
0/2/75	NOTICE OF APPEAL FILED. (Filed with attached papers-Affidavit of Service, Pauperis Oath and Motion for Certificate of Probable Cause)	(8)
0/2/75	Notice of Appeal, certified and copy of docket entries mailed to the C. of A.	(9)
0/3/75	Certified. Index on Appeal ~~XXXd~~. Certified copies of Index on Appeal with Original and docket entries mailed to the C. of A.	

10/3/75

Appeal by Hyfler

(B)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
AUG - 7 75
TIME A.M.
P.M.

- -X

UNITED STATES OF AMERICA ex rel. :
JAMES HAWKINS, :

Petitioner, :

-against- MEMORANDUM AND ORDER

J. E. LA VALLEE, : 75-C-1019

Respondent. :

- -X

A P P E A R A N C E S:

James Hawkins
Petitioner Pro Se

Honorable Louis J. Lefkowitz
Attorney General of the State of New York
Two World Trade Center
New York, New York 10047
Barbara Ann Shore, Esq.
Assistant Attorney General
Of Counsel

WEINSTEIN, D.J.

Petitioner claims that he was not capable of standing trial and that, therefore, his conviction was constitutionally unfair. He has a history of epilepsy. During his first trial he had a seizure and a mistrial was declared. The defendant then received treatment. He was declared fit to stand trial, tried and convicted. Following appeals, a post-trial coram nobis hearing was held at which time the court found that he had been competent to stand trial. The transcript of the hearing of October 28, 1968, prior to the second trial, reveals a defendant who was articulate and highly effective in pressing his logical desire for an early trial. The coram nobis hearing confirms the opinion of Judge Cowin of January 5, 1973 that the "defendant has failed to prove by a preponderance of the credible evidence that he was under such incapacity at the time of trial or sentence as would necessitate the vacating of the judgment."

It can be argued, however, that the state should, at the coram nobis hearing, have assumed the burden of showing competency to stand trial at the coram nobis hearing. Compare Mullaney v. Wilbur, -- U.S. -- , 95 S. Ct. 1881 (1975) (elements of crime must be proved beyond a reasonable doubt) with Drope v. Missouri, -- U.S. --, 95 S. Ct. 896 (1975) (power of state to allocate burdens in post-conviction

remedies).

Assuming, for purposes of this opinion, that the state had that burden, another hearing in this court at this time would be fruitless. The stipulations, documentary proof, and contempary transcripts are far more probative than defendant's present testimony. Admittedly he lacks any memory of events at the time in question. Record Hearing October 20, 1972, pp. 12-13. No further information would result from a hearing. This court, on the record, would be compelled to find no reasonable doubt that petitioner was competent to stand trial.

There is no point in going through the formality of producing the petitioner and holding another hearing at great inconvenience to the state under these circumstances. The record fully supports the conclusion that defendant's case at the pre-trial, trial, and post-trial levels, was handled with fairness and with scrupulous attention to his constitutional rights.

Accordingly, the petition is dismissed. The Clerk of the Court will send a copy of this Memorandum and Order to the Attorney General of the State of New York, attention Barbara Ann Shore, Esq., and to petitioner.

So ordered.

Dated: Brooklyn, New York
August 25, 1975

U.S.D.J.

Dr. Medwin 6/69

FORM 81 142

MEMORANDUM

SUPREME COURT : KINGS COUNTY (CRIMINAL TERM, PART VI)

PEOPLE OF THE STATE OF NEW YORK

vs.

JAMES HAWKINS

By COWIN, J.

Dated JANUARY 5, 19 73

This is a motion in the nature of coram nobis, deemed made pursuant to CPL Sec. 440.10, subd. 1(e), to vacate a judgment of the Supreme Court, Kings County, Criminal Term, Part IX, made and entered April 25, 1969 upon the grounds that:

> 1.(e) "During the proceedings resulting in the judgment, the defendant, by reason of mental disease or defect, was incapable of understanding or participating in such proceedings."

The facts are as follows:

During trial on February 14, 1968, the court (Ryan, J.), committed defendant to Kings County Hospital for mental examination after he had apparently suffered an epileptic seizure. On February 16, 1968, the report of Kings County Hospital found defendant incapable of standing trial. As a result of the report, a mistrial was declared and defendant committed to the Department of Mental Hygiene. On March 4, 1968 he was transferred to Mattewan State Hospital. Subsequent thereto, on July 1, 1968, he was discharged from said hospital and returned as fit to proceed to trial. On July 11, 1968 the case was restored to the trial calendar pursuant to Section 662-b, subd. 2, of the Code of Criminal Procedure.

The defendant appeared before Mr. Justice Oliver D. Williams on October 28, 1968, with Mr. Gartenhaus, his then counsel, present. Mr. Gartenhaus asked to be relieved as counsel. Mr. Justice Williams discussed the motion at length with the defendant who expressed himself clearly without any hint whatsoever of any mental incapacity. The late Mr. Nachbar was substituted as counsel.

The retrial was held before Mr. Justice Ryan from December 3 to December 5, 1968, on which date the defendant was found guilty by verdict of a jury. On April 25, 1969, the defendant was adjudged a 4th Felony offender and sentenced to a term with a minimum of 15 years and a maximum of life imprisonment.

On October 20, 1972, a hearing before this court was held to determine petitioner's competency at the time of the retrial and at the time of sentence. Defendant claimed that he did not remember the motion before Mr. Justice Williams on October 28, 1968, the second trial before Mr. Justice Ryan, his sentencing, or the late Leo Nachbar, Esq., his counsel. At the hearing, it was stipulated that the detailed report of the Kings County Hospital dated August 4, 1972, attested to by Daniel Schwartz, M.D., FAPA, Director, Forensic Psychiatric Service, at said institution states: "It is my professional opinion that there is no indication that the defendant was not fit to proceed at the time of his trial in December 1968."

It was further stipulated that upon his return from Mattewan on July 1, 1968, the medical records of the House of Detention where he was held pending trial, failed to disclose any mental examinations of the defendant. It was further agreed that at the time of trial, counsel for defendant did not request any mental examination nor was any objection made that defendant was unfit to proceed to trial. It was further stipulated that if Judge Ryan were called to testify, he would state that from his observations, the defendant was sane and competent to stand trial.

Although coram nobis would be the appropriate remedy if it were established that appellant was mentally incompetent at the time of his plea (People v. Boundy, 10 N Y 2d 518, 520), appellant must produce som evidence of his insanity at that time if such relief is to be accorded (People v. Welsh [3rd Dept. 1970] 33 A D 2d 945, 306 N.Y.S. 2d 861).

Furthermore, the strong presumption of regularity attending the judgment of conviction will give way only to substantial contrary evidence (People v. Richetti, 302 N.Y. 290, 298; People v. Chait, 7 A D 2 399, 401, affd. 6 N Y 2d 855) and appellant had the burden of proving his claim by a fair preponderance of the credible evidance (People v. Recore, 29 A D 2d 893; People v. Murphy, 20 A D 2d 222, 225, cert. de 377 U.S. 971; People v. Hunt, 31 A D 2d 846, 847, 3rd Dept. 1969). C.P.L. 440.30 subd. 6, codifies early case law on the subject.

"Since defendant was charged with the burden of proving his allegations by a preponderance of the evidence, which he failed to do, the people had no burden to establish the contrary. People v. Murphy [2d Dept. 1964] 20 A D 2d 222, 225; 246 N.Y.S. 2d 562, cert. den. 377 U.S. 12 L. Ed. 2d 940, 84 Sup. Ct. 1653)."

This court finds as fact that the claim of the defendant that he does not remember having been before Mr. Justice Williams on October 28, 1968, nor does he recall his retrial on December 3, 4 or 5 of 1968, or his sentencing on April 25, 1969 is a pure fabrication as is the claim that he does not remember the late Leo Nachbar, Esq., his assigned counsel on the retrial and sentence.

This court finds as a matter of law that the defendant has failed to prove by a preponderance of the credible evidence that he was under such incapacity at the time of trial or sentence as would necessitate the vacating of the judgment.

Motion denied.

Submit order.

J. S. C.

L.A.S.

FORM 91 A 142

MEMORANDUM

SUPREME COURT KINGS COUNTY (CRIMINAL TERM, PART VI)

PEOPLE OF THE STATE OF NEW YORK

vs.

JAMES HAWKINS

By COWIN, J.

Dated September 22, 19 72

Ind. #3432/66

This is a motion in the nature of a coram nobis proceed[illegible] deemed made pursuant to C.P.L. section 440.10 subdivision 1(e) to vacate a judgment of the Supreme Court, Kings County, Criminal Term, Part IX, made and entered April 25, 1969 upon the grounds that "1(e) During the proceedings resulting in the judgment, the defendant, by reason of mental disease or defect was incapable of understanding or participating in such proceeding."

The petitioner was convicted on December 20, 1966 for the crimes of robbery in the second degree, grand larceny in the first degree and assault in the second degree. He was sentenced as a fourth felony offender on April 25, 1969 to a term of 15 years to life. The judgment was affirmed on September 27, 1971 by the Appellate Division, Second Judicial Department (37 A D 2d 801).

It is the petitioner's contention now that he did not comprehend the proceedings due to mental incompetency. There was no defense of incompetency or insanity raised at the trial or at the time of sentence.

The first trial resulted in a mistrial due to the petitioner's experiencing an epileptic seizure in the courtroom. Subsequent thereto petitioner was found to be psychiatrically unfit to stand trial and then at a later date was found capable of standing trial. A second

trial was held before the same trial justice and the defendant was convicted. Subsequently he was sentenced. The petitioner's incompetency was not raised either at the trial or at the time of sentence.

The question presented is whether in view of the defendant's long history of mental illness and his illness at the first trial, the court should have ordered on its own motion a psychiatric examination prior to the trial and at the time of sentence. No such examination was ordered.

Under the fact pattern of this case, a hearing is ordered to determine the petitioner's competency to stand trial (Pate v. Robinson, 383 U.S. 375, 378; People v. Hudson, 19 N Y 2d 137; People v. Gonzalez, 20 N Y 2d 289, 293; People v. Mullooly, 37 A D 2d 6, 8).

The same hearing shall also determine petitioner's competency at the time of sentencing (People v. Boundy, 10 N Y 2d 518; People v. Bangert, 22 N Y 2d 799; People v. McGill, 36 A D 2d 827).

Counsel should confer with the court to set a hearing date.

Submit order.

HON. WILLIAM T. COWIN

J.S.C.

COPY

KINGS COUNTY HOSPITAL CENTER

CLARKSON AVENUE, BROOKLYN, N. Y. 11203

August 4, 1972

Mr. Abe Medwin
Legal Aid
Supreme Court Kings
Brooklyn, N. Y.

Re: James Hawkins
Indictment No. 3432/66

Dear Sir:

The patient is a 56 year old man who has been convicted on two counts each of Robbery in the 2nd Degree and Assault in the 2nd Degree and one count each of Grnad Larceny in the 1st Degree and Petit Larceny. Sepcifically, on October 7, 1964 three men committed the above crimes at the Bensonhurst Nursing Home, the patient having previously instructed them on how to commit the crime and having subsequently shared in the profits. On December 3, 1968 the defendant went to trial before Judge Ryan. On April 25, 1969 he was sentenced as a four time offender to 15 years to life.

The patient first went to trial on these charges in February 1968 but, according to a letter by Justice Ryan dated February 14, 1968, "During this trial the defendant had what appears to be an epileptic seizure and has behaved strangely during the trial." The psychiatrist at Kings County Hospital found him to be unfit to proceed because of a chronic brain syndrome with convulsive disorder. On March 4, 1968 he was transferred to Matteawan. They discharged him as fit to proceed on July 1, 1968. Prior to his trial in December 1968 the defendant received no psychiatric examination. The defense therefore questions his fitness to proceed at that time in view of the finding of not fit to proceed nine months earlier.

The patient was examined by me at Supreme Court Kings on May 17, 1972. In addition I have reviewed the documents:

"1. A letter from Central State Hospital, Louisville, Kentucky to the Director of Dannemora, dated November 4, 1958.

2. The Matteawan Chart No. 11,381 from March 9, 1961 to May 23, 1962. Within this is the report of Bellevue Hospital which led to that admission and the report of Dannemora dated October 21, 1958 to May 21, 1959.

3. Kings County Hospital Chart No. 180438 from December 22, 1965 to December 30, 1965.

4. Kings County Hospital Chart No. 190341 from September 11, 1967 to October 24, 1967.

5. Kings County Hospital Chart No. 192583 from February 14, 1968 to March 4, 1968

6. The Matteawan Chart No. 13,444 from March 4, 1968 to July 1, 1968.

(Continued)

Re: James Hawkins August 4, 1972

A review of all these charts indicates a long history of criminal behavior dating back to the defendant's childhood. He was inducted into the Army in April, 1942. In June, 1943 he was convicted of being AWOL and sentenced to three years. In January, 1946 he was dishonorably discharged. In June, 1946 he was admitted to Mason General Hospital and in November, 1946 was transferred from Mason General Hospital to Central State Hospital in Louisville, Kentucky. The diagnosis was schizophrenia, unclassified. In either March or November, 1947 he eloped.

In October, 1958 he was transferred from Clinton Prison to Dannemora because he was found sitting on his bed shivering, negativistic and gazing off into space. He seemed to be somewhat dazed and spoke of having had black-outs, following which he would have headaches, buzzing in the right ear and hallucinations of his dead sister's voice. In a short time he showed no symptoms. He was discharged in May, 1959 with a diagnosis of psychosis due to convulsive disorder, epilepsy, clouded states.

On January 16, 1961 he was admitted to Bellevue Psychiatric following his arrest for robbing a grocery store at gunpoint. On February 4, 1961 he was returned to court with a diagnosis of sociopath.

On February 9, 1961 he was readmitted to Bellevue. There they he was very confused and talking in a frightened, disconnected and at times illogical manner. He was very irritable and paranoid. The diagnosis was that of a reactive state. On March 9, 1961 he was transferred to Matteawan.

In Matteawan he described thinking that people on the street were talking about him. He said that on occasion he had recently heard the voice of someone who did not like him and that he frequently heard God's voice. He appeared to be quite frightened and confused. For a while he insisted that he could not remember the crime, stating that on that day he had had a convulsive seizure. He appeared to be very evasive and avoiding telling the truth. On May 15, 1961 psychological tests were done; these did not suggest any organic involvment. Eventually the patient acknowledged having committed armed robbery of a grocery store and was able to give all the details of how he committed the crime. On May 23, 1962 he was discharged with the diagnosis of psychosis with psychopathic personality.

When first admitted to Kings County Hospital in 1965 by order of Criminal Court following his arrest on the present charges, the patient gave a history of having been in Matteawan via Bellevue. He showed no significant pathology. He described the charges against him quite accurately, including how he was incriminated, stating that he knew one of the three men committing the robbery. He stated he was innocent. He denied any seizures in the recent past and made no claim of seizures at the time of the robbery or amnesia at that period of his life.

When admitted to Kings County Hospital for the second time in 1967, this time by order of Supreme Court following his indictment for these charges, the patient was quite truculent and disgruntled. Now he claimed to have

(continued)

had seizures in the recent past and at the time of the robbery. However, he admitted to taking anti-convulsive medication only irregularly. He also admitted to sporadic drinking heavily and claimed that, despite the fact that he was a nurse's aid, he had no idea that alcohol could bring on seizures. He claimed to have a rather extensive period of amnesia, surrounding the time of the robbery and covering a period of several years.

On February 15, 1968, immediately after his third admission to Kings County Hospital, an EEG was reported as "abnormal, non-paroxysmal EEG with defense sole activity somewhat more accentuated over the right posteria area. This type of EEG is non-specific." On psychiatric examination he was disoriented, irrelevant, incoherent and smiling inappropriately. He was diagnosed as suffering from a chronic brain syndrome with convulsive disorder and was transferred to Matteawan on March 4, 1968.

In Matteawan he was initially mentally confused but soon began to improve. On June 14, 1968 he was examined by Doctors Tekben and Friedman, who found him fit to proceed. He described the charges against him, claimed that they were not true and said that he would be able to prove his innocence in court. He asked to be returned to court, and that was done on July 1, 1968.

I have also reviewed the records of the Brooklyn House of Detention from July 1, 1968 until after his conviction on these charges. During that time he was being treated with Dilentin and Phenobarbital. There is no indication that he suffered any seizures in jail (nor did he in Matteawan) or that he showed any other psychiatric abnormalities during that period of time.

CONCLUSION: It is my professional opinion that there is no indication that the defendant was not fit to proceed at the time of his trial in December, 1968.

DISCUSSION: There are three reasons for this conclusion:

1. The whole history of seizures in this patient is questionable. His history is full of contradictions. For instance, in 1946 he gave no history of epilepsy. Later he did give a history of epilepsy, attributing it to a blow on the head which he sustained while in the Army. However, as far as can be determined, the Army records show no indication of such a head injury or epilepsy, nor did the patient ever apply for disability benefits on this basis. He never had any seizures while in Dannemora or Matteawan. During his first hospitalization at Matteawan he insisted that he could not remember what happened on the day of the crime because he had had a seizure (See interview of May 10, 1961). However, on April 11, 1962 he was able to remember the robbery. If he had truly had a seizure on the day of the robbery, no amount of time would have brought back the memory. He also claimed at times (November 14, 1961 and April 10, 1962) that his history of seizures dated back to childhood, to the age of 10. As noted previously, psychological tests at Matteawan on May 15, 1961 showed no evidence of organicity. An EEG at Kings County Hospital on May 19, 1972 was normal.

2. The patient's conversation of his state of mind at the time of the present offense has varied. When first admitted to Kings County Hospital fourteen

(continued)

Re: James Hawkins August 4, 1972

months after the robbery of the nursing home, he made no claim of seizures at the time of the robbery or of amnesia for that period of his life. Two years later he was claiming seizures and amnesia.

3. Most important is the fact that the defendant was fit to proceed when examined in Matteawan on June 14, 1968 by Doctors Tekben and Friedman. Without any evidence to the contrary I must assume that the defendant continued in this state of mind. There is nothing in the jail records or the minutes of the trial to indicate the contrary.

Yours very truly,

Daniel W Schwartz /rw

DANIEL W. SCHWARTZ, M.D., F.A.P.A
Assistant Professor, Psychiatry,
Downstate Medical Center
Director, Forensic Psychiatry Service,
Kings County Hospital Center

DWS/rw

C O P Y*

DEPARTMENT OF CORRECTION
MATTEAWAN STATE HOSPITAL
BEACON, N.Y.

June 25, 1968

Re: James Hawkins
Indictment #3432/66
Crime: Robbery 1st Degree

Honorable John J. Ryan
Justice Supreme Court
Kings County
Supreme Court Building
Brooklyn, N.Y. 11201

Dear Judge Ryan:

In accordance with the provisions of Section 662B of the Code of Criminal Procedure, I now certify that James Hawkins is no longer in such state of idiocy, imbecility or insanity, as to be incapable of understanding the charge against him or of making his defense thereto.

I am enclosing an Order for your attention directing the New York City Department of Correction to return the patient to the proper authority.

Very truly yours,

/s/

W. C. JOHNSTON, M.D.
SUPERINTENDENT

WCJ:rn

FILED JUL 1 1968

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*Re-typed because of inability to duplicate original due to its lightness.

ED 23 5631 7/1/68

At a Criminal Term, Part I, of the Supreme Court of the State of New York, Kings County, Brooklyn, New York, on the 28th day of June, 1968.

PRESENT:

HON. JULIUS HELFAND

JUDGE OF THE CRIMINAL COURT OF THE CITY OF NEW YORK ACTING AS JUSTICE OF THE SUPREME COURT CRIMINAL TERM KINGS COUNTY

Justice

- -x

THE PEOPLE OF THE STATE OF NEW YORK :

Plaintiff, : Indictment No. 3432/1966

-against- :

JAMES HAWKINS :

Defendant. :

- -x

WHEREAS, Dr. J. C. Johnston

Superintendent of the Matteawan State Hospital, Beacon, New York, under the provisions of Section 662-b of the Code of Criminal Procedure, has certified that James Hawkins who was committed to the said hospital on the 19 day of February, 1966, by the Hon. John J. Ryan, Justice of the Supreme Court, Kings County, is no longer in such state of idiocy, imbecility, or insanity as to be incapable of understanding the charge now pending against him (her) in the Supreme Court, Kings County, or of making his (her) defense thereto, it is

ORDERED, that the Commissioner of Correction of the City of New York, or her duly authorized agent, is hereby directed to proceed to the Matteawan State Hospital and convey the said defendant to a House of Detention for Men, where he will remain [illegible] otherwise dealt with according to law,

C 5691

At a Criminal Term, Part I, of the Supreme Court of the State of New York, Kings County, Brooklyn, New York, on the 28th day of June, 1968.

PRESENT:

HON. JULIUS HELFAND

JUDGE OF THE CRIMINAL COURT OF THE CITY OF NEW YORK, ACTING AS A JUSTICE OF THE SUPREME COURT, KINGS COUNTY, CRIMINAL TERM

Justice

- -x

THE PEOPLE OF THE STATE OF NEW YORK :

Plaintiff, : Indictment No. 3432/1966

-against- :

JAMES HAWKINS :

Defendant. :

- -x

WHEREAS, Dr. W. C. Johnston Superintendent of the Matteawan State Hospital, Beacon, New York, under the provisions of Section 662-b of the Code of Criminal Procedure, has certified that James Hawkins who was committed to the said hospital on the 19 day of February, ,1966 by the Hon. John J. Ryan , Justice of the Supreme Court, Kings County, is no longer in such state of idiocy, imbecility, or insanity as to be incapable of understanding the charge now pending against him (her) in the Supreme Court, Kings County, or of making his (her) defense thereto, it is

ORDERED, that the Commissioner of Correction of the City of New York, or her duly authorized agent, is hereby directed to proceed to the Matteawan State Hospital and convey the said defendant to a House of Detention for Men, where he will remain until legally discharged or otherwise dealt with according to law, and it is further

ORDERED, that the Department of Correction produce the said defendant before the Justice presiding in Criminal Term, Part I, of the Supreme Court, Kings County, State of New York, on the 11 day of July ,1968, at 10 o'clock in the forenoon, for further proceedings.

GRANTED

JUN 28 1968

CLERK

ENTER

ACTING J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------X

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiffs,

-against-

Indictment No.
3432/1966

JAMES HAWKINS,

Defendant .

----------X

WILLIAM I. SIEGEL, being an attorney-at-law and an Assistant District Attorney of Kings County, does hereby affirm to be true under the penalties of perjury the following allegations:

I make this affirmation with respect to a motion in the nature of coram nobis (verified November 10, 1971) to vacate a judgment dated April 5, 1969, which convicted defendant of Robbery in the Second Degree, Assault in the Second Degree, and Petit Larceny after trial upon an indictment dated December 20, 1966, charging Robbery in the First Degree, Grand Larceny in the First and Second Degrees, Assault in the Second Degree, and Violation of Penal Law, Section 1308, and sentenced him as a fourth offender to 15 years to life (Ryan, J., a Criminal Court Judge sitting as a Supreme Court Justice).

The defendant contends that when he was put to trial, he was in such state of mental disability and such long continued mental disability that it was improper and illegal to try him. He says that not only was this so, but in fact Judge Ryan knew of his mental condition and in fact had committed him in February, 1968 "to a mental hospital". Nevertheless, he asserts the Court "did not order a re-examination of your petitioner before trial".

The defendant made a substantially identical motion by a petition verified November 18, 1969, which I answered in an affirmation dated January 26, 1970. In that earlier petition the defendant asserts that he was committed to Kings County Hospital for

observation by Judge Ryan on or about February 14, 1968 and during the trial. This fact is verified by the records of this office. Moreover, these records show that on February 16, 1968 a motion for a mistrial was granted on the motion of Herman Gartenhaus, Esq., and the defendant who had already been committed, as I have said, to Kings County Hospital was again recommitted for further examination, following which he was committed to Matteawan State Hospital. He returned from Matteawan on or about June 25, 1968 with a certification, pursuant to Code Crim. Pro., Section 662-b, of fitness to be tried. Mr. Gartenhaus was relieved of the assignment on October 21, 196 , and on October 28, 1968 Leo Nachbar, Esq. was assigned in his place. The actual trial occurred between December 3 and December 5, 1968, with the resultant guilty verdict which I have mentioned.

I pointed out in my affirmation of January 26, 1970, in which I answered the earlier motion, that the defendant asserted in his earlier motion that although Judge Ryan knew "of the defendant's previous mental history, he did not order an examination of the defendant before trial or before sentence".

In that earlier motion defendant sets forth a history of incompetency and commitment to various institutions beginning in 1946, and repeated in 1959, 1961 and 1968. He also says that his defense was hampered at the time of the trial because he was suffering from epileptic seizures, and asserted (and in the present motion reasserts) that the jail records would show that he had suffered seizures in November and December of 1968 and that he was taking medication "both during and after trial for epileptic seizures". He still takes such medication in prison.

In my affirmation of January 26, 1970 I wrote that the interest of justice requires that he be accorded a hearing "to determine whether or not the certification of sanity by Matteawan

State Hospital in June, 1968 was adequate to determine the defendant's fitness for trial in October of that year", and I consented to a hearing.

A hearing was held before Mr. Justice Rinaldi. Assistant District Attorney Barra was assigned to hold the hearing. He reported that defendant had filed a notice of appeal from the judgment of conviction dated April 25, 1969. Mr. Barra said, "He has an appeal pending in the Appellate Division on the same issues as raised in the present coram nobis", as to which I had consented to a hearing. Mr. Barra continued: "In view of the fact that the issues are the same, the defendant withdrew without prejudice the present coram nobis, pending the outcome in the Appellate Division. Motion withdrawn without prejudice." An order was made under date of May 21, 1970 by Rinaldi, J. denying the motion coram nobis "without prejudice to renewal after determination of pending appeal from judgment of conviction".

I have read the brief filed by Assistant District Attorney Rosenberg on that appeal. The fact is that the issue of the defendant's mental unfitness for trial did not figure into the appeal at all. For instance, Mr. Rosenberg's brief contended that "the prosecution was diligent and no rights of appellant were violated" in that defendant's motions to dismiss for lack of prosecution were denied. Mr. Rosenberg also addressed himself to the People's contention that defendant's guilt was established beyond a reasonable doubt and that no legal errors were committed on the trial. Finally, Mr. Rosenberg argued that the defendant was properly sentenced under former Penal Law.

Since this was so with respect to the appeal, we really are back to the situation which existed when, by my affirmation of January 26, 1970, I consented to the hearing which was aborted by

the disposition of the motion by Mr. Justice Rinaldi's order of May 21, 1970 denying without prejudice, etc.

For all of the foregoing reasons, I, therefore, now consent, as I did in my former affirmation of January 26, 1970, to a hearing.

The clerk's face sheet contains a notation that defendant asks to have "specified counsel assigned". I fail to find that in the motion and, therefore, take no position with respect thereto. Moreover, even if there were an explicit request by the defendant, he has no right to make such a demand, and I would oppose it.

Dated: Brooklyn, New York
December 16, 1971

WILLIAM I. SIEGEL

Excerpt from brief filed for appellant in judgment appeal on file Supreme Ct. Clerk, Kings Co.

petit larceny (a lesser included offense under the fifth count).

Finally, appellant has requested that I raise a question concerning his competency to stand trial. [This phase of the case appears to raise what might be a very substantial question that could be better left for coram nobis treatment after appellant's direct appellate review has been exhausted.* However, inasmuch as some facts concerning the question of sanity were embraced within the ambit of the judgment roll involved herein, they are set forth in order that they shall be before this Court. Only those facts which were developed prior to the judgment herein and which appear on the face of the record, are presented, but we hasten to add in order that the issue of sanity shall not be deemed waived, that there appear to be many other facts relating to appellant's alleged lengthy psychiatric history, which facts did not enter upon the face of the record prior to judgment.]

As indicated, some facts bearing upon appellant's mental capacity were developed prior to judgment below, and he has asked me to call them to this Court's attention. During

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*Subsequent to judgment herein, and on or about November 18, 1969, appellant petitioned the trial court for coram nobis relief, reciting a lengthy psychiatric history. His allegations were sufficiently serious as to occasion consent by the District Attorney's Office (affirmation by assistant district attorney William I. Siegel, dated January 26, 1970) to a hearing concerning appellant's competency. To reiterate, this phase of the case was developed more substantially subsequent to the judgment below having been entered. (Footnote continued on next page)

appellant's first trial in or about February of 1968, a mistrial was occasioned as a result of epileptic seizures had by the appellant. Prior thereto, on November 8, 1967, his assigned counsel at the time, Mr. Gartenhaus, although he agreed to accept a prior finding of sanity, applied to Mr. Justice Rinaldi for the appointment of a psychiatrist to assist appellant [minutes of November 8, 1967, 2,3,4].

On or about February 15, 1968, the Kings County Hospital Center of the New York City Department of Hospitals concluded among other things, that appellant suffered from a "chronic brain syndrome with convulsive disorder", and found that he was incapable of standing trial. [See Kings County Hospital report dated February 15, 1968; see Mr. Justice Ryan's order for commitment, etc., dated February 19, 1968]. Thereafter, appellant's assigned counsel, Mr. Gartenhaus, alluded to appellant's mental condition, and sought to be relieved of the assignment by Mr. Justice Williams, the application having been granted, and new counsel having been assigned [see minutes of October 28, 1968]. Prior to appellant's re-trial, there was a finding of sufficient competency to stand trial. People v. Bangert, 22 N.Y.2d 799; People v. Gonzalez, 20 N.Y.2d, 289.

(Footnote continued from preceding page)

Earlier this year, the coram nobis application was withdrawn without prejudice, apparently to await the result of this appeal prior to proceeding with any coram nobis hearing on the issue of sanity.

CERTIFICATE OF SERVICE

December 30, 1975

I certify that a copy of this brief and appendix has been mailed to the Attorney General of the State of New York.

Richard A. Greenberg